



September 23, 2002

Ms. Meredith Ladd
Brown & Hoffmeister, L.L.P.
1717 Main Street, Suite 4300
Dallas, Texas 75201

OR2002-5347

Dear Ms. Ladd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 169041.

The Flower Mound Municipal Court (the "court") and the Flower Mound Police Department (the "department"), which you represent, received a request for copies of seven categories of information related to a specified speeding incident. You state that you do not maintain information that is responsive to categories two and seven of the request.¹ You claim that the remaining requested information is excepted from disclosure pursuant to sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that you did not submit any responsive information to us for review pertaining to category five of the request. We, therefore, presume that you have already provided the requestor with this information to the extent that it exists. If not, you must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Next, we note that the Act does not apply to records of the judiciary. *See* Gov't Code § 552.003(1)(B). We are unable to determine from your representations and our review of

¹ We note that it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 87 (1975), 342 at 3 (1982), 416 at 5 (1984), 452 at 2-3 (1986), 555 at 1-2 (1990), 572 at 1 (1990). A governmental body must only make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

the information at issue whether the submitted traffic citation is maintained by the court acting in its judicial capacity or whether it is maintained by the department under its law enforcement authority. Thus, if it is maintained solely by the court, it is not subject to the Act. *But see* Attorney General Opinion DM-166 (1992); Open Records Decision No. 618 (1993) (acknowledging common-law right to copy and inspect certain judicial records). However, if it is maintained by the department pursuant to the department's own authority, it is subject to the Act and must be released, unless excepted from disclosure. Accordingly, we address your claimed exceptions to disclosure based on a presumption that the submitted traffic citation is maintained by the department pursuant to the department's own authority.

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

. . . .

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code 552.108(a), (b). Generally, a governmental body claiming section 552.108 as an exception to disclosure of requested information must demonstrate how and why release of the requested information would interfere with law enforcement. *See* Gov't Code § 552.108(a), (b), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You indicate that all of the submitted information is related to a pending criminal case that has been filed against the requestor's client. Therefore, we agree that the release of the submitted traffic citation and the "Certificate of Accuracy" related to a particular speed measuring device "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a). Accordingly, we conclude that the department may withhold this particular information from disclosure pursuant to section 552.108(a)(1). We note, however, that the remaining documents concern personnel information regarding a specified officer. You do not explain, nor are we able to ascertain from our review of these documents, how they relate to the pending criminal case. Accordingly, we conclude that the department may not withhold these documents from disclosure under section 552.108 of the Government Code.

However, you also claim that a portion of these documents is excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, we conclude that the department must withhold from disclosure the Texas driver's license number of the specified officer that is contained within the submitted personnel document concerning this officer pursuant to section 552.130 of the Government Code.

In summary, you must release the information that is responsive to category five of the request to the extent such information exists and has not yet been provided to the requestor. If the submitted traffic citation is maintained solely by the court acting in its judicial capacity, it is not subject to the Act. If it is maintained by the department pursuant to the department's own authority, the department may withhold it, along with the "Certificate of Accuracy" related to a particular speed measuring device, from disclosure pursuant to section 552.108(a)(1) of the Government Code. The department must withhold from disclosure the Texas driver's license number of the specified officer that is contained within the submitted personnel document concerning this officer pursuant to section 552.130 of the Government Code. The department must release the remaining submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one

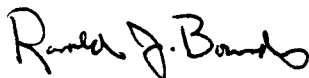
of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 169041

Enc. Submitted documents

cc: Mr. James M. Rauer, M.D., J.D.
Attorney at Law
5521 Greenville Avenue South, Suite 104-437
Dallas, Texas 75206
(w/o enclosures)